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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**BLENDTEC’S REPLY TO
BLENDJET’S RESPONSE TO
MOTION TO COMEPL RESPONSIVE
DOCUMENTS TO RFPS 31, 33, 35, 36
AND 37 [ECF 76]**

[REDACTED]

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Blendjet’s response (“Opposition”, ECF 76) to Blendtec’s Motion to Compel mischaracterizes the discovery at issue in order to claim Blendjet has complied with its discovery obligations when it has not:

RFP 33 requests Blendjet’s SEO reports, and provides (by Bates number) a monthly SEO

report *produced by Blendtec* as an example of a responsive document. *See* ECF 68-1 at 6. Blendjet claims it has provided responsive documents, citing JET632 and JET 633. Opposition, 2. Those documents are not responsive SEO reports. Blendjet also cites four emails (and misleadingly adds “etc.” when there are no others) to claim it “has produced summaries of its Google Ad and SEO campaigns.” *Id.* Those four emails are not monthly SEO Reports. They are emails from Blendjet’s SEO provider with a “[REDACTED]” at Blendjet’s SEO campaign. *See, e.g., Exhibits A-B.* The emails *state on their face* that the “[REDACTED]” “[REDACTED].” *Id.* Blendjet failed to produce those expressly requested “[REDACTED].” *See* Exhibit B. Further, much of the text in the emails is unreadable. *See* Exhibits A-B. Despite its highly misleading representation to the contrary, Blendjet has not produced the requested SEO reports.

In response to RFP 35, Blendjet agreed to produce documents showing “[REDACTED]” “[REDACTED]” “[REDACTED]” ECF 70 at 10. It failed to do so. JET00000001 provides line-item information through June 2022. JET00000007 shows summary sales information by retailer, but only for January 2020 through June 2022. Assuming these documents are sufficient to respond to RFP 35, they include only a snapshot of the relevant time period.

In response to RFP 36, Blendjet agreed to produce documents “it intends to offer as evidence in support of its defenses.” ECF 70 at 11. Blendjet represents to the Court that it “has produced a variety of [responsive] documents,” but cites only two search reports conducted by its lawyers in 2021 after receiving Blendtec’s demand letter. Opposition, 3. Blendjet is sandbagging. If Blendjet has other documents that support its defenses, the Court should order immediate

production.

In response to RFP 37, Blendjet agreed to produce documents reflecting any trademark search conducted in connection with the Blendjet Marks. ECF 70 at 12. Blendjet claims that “as noted above, [it] has produced trademark search reports responsive to this request.” Opposition, 3. But the trademark search reports produced by Blendjet were conducted by its lawyers in 2021, three years after Blendjet started using the infringing marks. They are not responsive.

Blendjet states that “[a]fter a reasonable and diligent search, Blendjet has not located any non-custodial documentation responsive to [RFP 31].” Opposition, 2. Although Blendtec seriously doubts the veracity of this, Blendjet failed to state this in its actual discovery response. ECF 70 at 7. It is improper to respond to a motion to compel by supplementing a discovery response.

Blendjet’s discovery misconduct must end. Blendtec should be awarded fees.

DATED this 31st day of March, 2023.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

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